

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2007-052524

03/04/2008

HONORABLE BRIAN R. HAUSER

CLERK OF THE COURT

D. Galligan

Deputy

IN RE THE MARRIAGE OF
STEPHEN F JELACIC

RICHARD J BOYD

AND

FAY L JELACIC

FAY L JELACIC
10462 N NICKLAUS DR
FOUNTAIN HILLS AZ 85268

FAMILY COURT SERVICES-CCC
TASC - PHOENIX

MINUTE ENTRY

The Petition for Dissolution was taken under advisement after Trial held February 20, 2008.

FACTS

1. The parties married June 16, 1990 and they have three children: Isabella Jelacic, born April 3, 1995; Stephana Jelacic, born April 22, 2001; and Josephina Jelacic, born November 12, 2002.
2. The Petition was filed July 19, 2007 and was served July 27, 2007. Earlier that year in January, the paternal grandparents of the children discovered them being neglected by the parties who had become drug addicts. The paternal grandparents filed a private dependency action in the Juvenile Court, the children were adjudicated dependent and

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placed in the legal and physical custody of CPS. CPS then placed the children with the paternal grandparents through the dependency.

The children have been provided counseling throughout the dependency proceedings as well. The oldest child, Isabella, was returned to Father in October, 2007. The remaining children were returned to Father's residence by early January, 2008 as the Juvenile Court deemed the family reunification efforts complete. Exhibits 8 and 9.

The therapist for the children is now recommending to CPS that the dependency case be closed as Father has demonstrated the ability to care for the children's physical and emotional needs. On the other hand, the children are concerned for Mother's continued drug abuse and her volatility with Father. The therapist recommends that Mother have no visitation with the children because they are exposed to her drug induced behaviors. Exhibit 10

3. Father testified that the children are doing well in school and they enjoy activities together. He is receiving counseling and has been treated monthly by a psychiatrist. Mother has supervised visits every Thursday for one hour. CPS is providing supervision but that service will end when the dependency is closed.
4. Father works for the United States Postal Service and earns \$4,145.33 per month based on an annual salary of \$49,852. He participates in the government retirement program. He pays \$75 per month to provide health insurance for the children and \$136 per month in child care. Exhibit 1.

Mother is unemployed and she has no concrete plans to obtain a job. In the past, Mother worked as a hotel telephone operator earning \$10.00 per hour. Currently, Mother is supported by her parents. Mother has not submitted to a drug test since October 2007 and has used drugs up to one week ago, according to her testimony.

5. Mother requests spousal maintenance of \$1,200 to \$1,500 for six months.
6. The parties have no community real property. They own a Honda worth \$6,500.00 and a Jeep worth \$1,500.00.

Father has an interest in his government pension plan that is community property.

7. The parties have two debts totaling approximately \$711.00.

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8. The parties are the holders of a \$29,000 criminal restitution lien that is paid at the rate of at least \$50.00 per month. Mother has received approximately \$1,000.00 during the pendency of this case.
9. Father received \$4,820.00 on or about June 15, 2007 in a tax refund that is community property.
10. Mother agrees that Father shall be awarded the following personal property:
 - Spare tire
 - Drum set
 - Hydraulic jack
 - Bunk beds
 - Motor
 - 1 set of china

Father agrees that Mother shall be awarded all other personal property.

LAW

11. The Court has considered the factors in A.R.S. §25-403(A).

1. Parent's wishes

Father requests sole legal custody and Mother requests joint legal custody.

2. Child's wishes

The children's therapist has reported to CPS that Isabella desires no contact with Mother as long as Mother is using drugs. Stefana and Josephina have had weekly supervised visits with Mother. The wishes of these young children as to custody is unknown based on the evidence presented.

3. Interaction and interrelationship of child with parents, siblings and others

The children are living with Father again following their return to his physical custody by CPS. Mother has limited access to the children because of her failure to comply with drug testing.

4. Child's adjustment to home, school and community

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By all reports and inferences from the evidence, the children are doing well at school and in Father's care.

5. Mental and physical health of all individuals involved

Mother is an untreated drug abuser who has evaded drug testing as ordered by CPS. She also has failed to submit to a psychological evaluation ordered by CPS. It is profoundly revealing that when Mother was faced with an action by the State to remove her children from her care and then was offered an opportunity to regain custody if she would participate in the very services designed to rehabilitate her, Mother refused to cooperate. Mother has chosen drugs over her children.

On the other hand, Father cooperated with CPS and rehabilitated himself. He recognized his need for mental health treatment and received it. He also successfully completed drug testing as ordered.

The children have been engaged in counseling through CPS and it has benefited them, according to the therapist.

6. Which parent is more likely to allow the child frequent and meaningful continuing contact with the other parent

Neither parent is favored in this category.

7. Primary caretaker of child

Before CPS removed the children, the parties were equally involved in caring for the children, albeit neglectfully.

Based on the foregoing factors,

IT IS ORDERED awarding Father sole legal custody of the minor children. Mother is awarded supervised parenting time every Sunday between 1:00 p.m. and 5:00 p.m. for up to three hours. Parenting time may be supervised by any of the children's grandparents or other person agreed to in writing by the parties.

Mother is ordered to participate in weekly drug testing at TASC at her expense. Once Mother has provided six months of clean test results her parenting time is modified to unsupervised parenting time on alternate weekends from Friday 6:00 p.m. to Sunday 6:00 p.m.

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At that time the parties shall resume the standard summer and holiday parenting time schedule as follows:

HOLIDAY SCHEDULE: (Takes priority over the regular parenting-time schedule.)

On the three-day weekends (such as Civil Rights Day, Columbus Day, Presidents' Day, Memorial Day, Labor Day, etc.) the child will remain in the care of the parent who has the child for the weekend until return to school or the other parent the following day.

Easter Sunday: The child will spend this holiday with Mother in even-numbered years and with Father in odd-numbered years.

Mother's Day: With Mother every year.

Father's Day: With Father every year.

4th of July: The child will spend this holiday with Father in even-numbered years and with Mother in odd-numbered years.

Halloween: The child will spend this holiday with Mother in even-numbered years and with Father in odd-numbered years.

Thanksgiving Day: The child will spend this holiday with Father in even-numbered years and with Mother in odd-numbered years.

Christmas Eve: The child will spend this holiday beginning at 6:00 p.m. with Father in even-numbered years and with Mother in odd-numbered years, to be returned to the other parent's home by 8:00 a.m. Christmas Day.

Christmas Day: The child will spend this holiday with Mother in even-numbered years and with Father in odd-numbered years, from 8:00 a.m. until 10:00 a.m. December 26th.

Christmas/Winter school break: The Christmas/Winter school break shall be evenly divided with the parent who has Christmas Eve having the first one-half of the break and the other parent having the remainder of the break.

Children's birthdays: Mother will have the children on their birthdays in even-numbered years and Father in odd-numbered years.

Parent's birthdays: Each parent may have the children on his/her birthday if he/she so desires.

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Spring break: The Spring break shall be equally divided.

Summer: Each parent shall also have 2 weeks (1 week if the child is under age six) of continuous uninterrupted parenting time during the summer commencing on a date designated by that parent by May 1st of each year, unless otherwise agreed to. If the designations conflict, then Mother's designations shall have priority in even-numbered years and Father's shall have priority in odd-numbered years. However, summer access shall end no later than one week prior to the start of school.

The parties may deviate from this schedule only by written agreement.

The parties shall use the services of a private counselor or Conciliation Services of this Court to resolve any disputes, problems or proposed changes regarding this child custody and parenting time order before seeking further relief from the Court.

Mother is ordered to pay \$432.86 per month as child support through the Clerk of Court Clearinghouse based on the evidence and the Child Support Worksheet filed herewith.

IT IS ORDERED settling and approving the formal written Child Support Order and Order of Assignment signed by the Court on February 25, 2008 and filed (entered) by the Clerk on March 4, 2008.

LET THE RECORD REFLECT that copies of the Child Support Order and Order of Assignment are mailed to the parties and/or counsel by way of separate mailing.

IT IS FURTHER ORDERED that at any time an Order of Assignment is not paying the child support obligation in full, Respondent shall make full and timely payments directly to the Support Payment Clearinghouse in accordance with the "Instructions for Making Support Payments Through the Clearinghouse" attached with this minute entry.

12. Mother's request for spousal maintenance is denied as she does not qualify for spousal maintenance under any of the factors in A.R.S. §25-319(A). Mother is just as capable of supporting herself as is Father and neither is receiving any substantial property in the dissolution.
13. Mother is awarded the Honda and Father is awarded the Jeep. The Jeep is worth \$5,900 less than the Honda and so Father is entitled to \$2,500.00 from Mother. Father kept the entire \$4,820.00 tax refund of which he was entitled to one-half or \$2,410.00 thus, by

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retaining the entire tax refund Father has already received his equalization payment from Mother.

14. Father is awarded the Cox debt of \$252.00 and Mother is awarded the WAMU debt of \$459.00 since she is receiving the bulk of the personal property and has received all the restitution payments pending trial.
15. Each party is entitled to one-half all future restitution payments and they are ordered to notify the government agency responsible for issuing the restitution payments of this order.
16. Father's pension with the United States Postal Service shall be divided by QDRO.
17. Each party shall pay their own attorney's fees and costs.

IT IS ORDERED dissolving the marriage of the parties and restoring each party to the status of a single person.

This Decree shall be deemed sufficient deed, conveyance, assignment, transfer and bill of sale of any and all right, title, interest, claim and demand of every nature covered by this Decree.

IT IS FURTHER ORDERED signing this minute entry as a formal order of this Court pursuant to Rule 81, Arizona Rules of Family Law Procedure (ARFLP).

/ s / HONORABLE BRIAN R. HAUSER

JUDICIAL OFFICER OF THE SUPERIOR COURT

FILED: Child Support Order, Child Support Worksheet, Exhibit Worksheet and Order of Assignment

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.

Attachments:

FAY L JELACIC: Non IV-D Payment Instructions

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